



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21-31; DA 21-98; FRS 17466]

Wireline Competition Bureau Seeks Comment on Petitions for Emergency Relief to allow the Use of E-Rate Funds to Support Remote Learning During the COVID-19 Pandemic

AGENCY: Federal Communications Commission.

ACTION: Solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau (the Bureau) seeks comment on petitions for emergency relief from parties asking the Federal Communications Commission (Commission) to permit the use of E-Rate program funds to support remote learning during this unprecedented public health emergency.

DATES: Comments are due February 16, 2021 and Reply Comments are due February 23, 2021.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before February 16, 2021, and reply comments on or before February 23, 2021. All filings should refer to WC Docket No. 21-31. Comments may be filed by paper or by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments and replies may be filed electronically using the Internet by accessing ECFS: <http://www.fcc.gov/ecfs>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail. Filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L St, NE, Washington, DC 20554.

Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.

FOR FURTHER INFORMATION CONTACT: Gabriela Gross, Wireline Competition Bureau, (202) 418-7400 or by email at Gabriela.Gross@fcc.gov. We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Public Notice in WC Docket No. 21-31; DA 21-98, released on February 1, 2021. Due to the COVID-19 pandemic, the Commission's headquarters will be closed to the general public until further notice. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20-304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>. The full text of this document is available at the following Internet address: <https://www.fcc.gov/document/fcc-seeks-comment-using-e-rate-funding-support-remote-learning>.

Proceedings in this document shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period

applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule §1.1206(b). In proceedings governed by rule §1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in these proceedings should familiarize themselves with the Commission's *ex parte* rules.

The COVID-19 pandemic has underscored the critical need for broadband connections for millions of Americans, including students and teachers across the country. To mitigate the spread of the disease, schools and libraries have shut their doors and transitioned to remote learning and virtual services, either in whole or in part, leaving those students who found themselves caught in the "Homework Gap" before the pandemic facing extraordinary hardship and at risk of being unable to participate in any virtual studies.

As a result of the impact of the COVID-19 pandemic on schools and libraries, the Commission has received at least 11 petitions for emergency relief from parties asking the FCC to permit the use of E-Rate program funds to support remote learning during this unprecedented public health emergency (collectively, Petitions). By this document, the Bureau seeks comment on those Petitions. In so doing, the Bureau highlights three of the petitions, that together raise most of the issues covered by other

Petitioners: a petition filed by a coalition of E-Rate stakeholders led by the Schools, Health & Libraries Broadband (SHLB) Coalition, a petition for waiver filed on behalf of the State of Colorado and one filed by the State of Nevada, the Nevada State Board of Education, and the Nevada Department of Education.

As the pandemic continues to force schools and libraries across the country to remain closed and rely on remote learning and virtual services, either in whole or in part, the need for broadband connections—particularly for those students, teachers, staff, and patrons that lack an adequate connection at home—is more critical than ever. Eligible schools and libraries explain that they are hampered in their ability to address the connectivity needs brought on, and in many cases exacerbated, by COVID-19 because of the restrictions on off-campus use of E-Rate-funded services and facilities. Last spring, as the COVID-19 pandemic forced schools and libraries to grapple with the challenges of transitioning to remote learning, the FCC began to receive requests for emergency relief aimed at ensuring that all students have sufficient connectivity at home. Below, the Bureau summarizes three petitions, which reflect the experience of schools and libraries dealing with many months of remote learning.

Most recently, a coalition of stakeholders led by SHLB filed a petition for declaratory ruling and waivers asking the FCC to allow E-Rate-funded services and equipment to be used off-campus to enable remote learning for the duration of the pandemic. SHLB urges the Bureau, on delegated authority, to declare that during the pandemic, remote learning meets the standard of serving an “educational purpose” and thus, any off-campus use does not need to be removed from funding requests. SHLB also proposes opening a separate “Remote Learning Application Filing Window” to allow applicants to file new or revised requests for additional E-Rate funds for off-campus services and equipment that facilitate remote learning during funding years 2020 and 2021. SHLB recommends that the FCC provide unused E-Rate funds to support these Remote Learning applications and use the existing E-Rate discount methodologies to prioritize funding. SHLB further requests a waiver of E-Rate program rules, including

the competitive bidding, application, and eligible services rules to facilitate the Remote Learning Application Filing Window.

Last fall, Colorado filed a petition requesting waiver of the prohibition on the use of E-Rate funds and E-Rate-funded facilities and services to allow schools to extend their broadband Internet connectivity to students who lack adequate Internet connectivity at home, and the requirement to cost-allocate such off-campus use. Colorado explains that temporarily waiving the restrictions on off-campus use of E-Rate-supported equipment and services is consistent with the Communications Act, which requires the Commission to provide support for services that “are essential to education, public health, or public safety” and “are consistent with the public interest, convenience, and necessity.” Colorado further explains that because the school classroom has shifted from a shared physical space to a virtual space during the pandemic, the Commission can and should waive the E-Rate program requirements accordingly to provide students with the broadband Internet connectivity needed to fully engage in remote learning. Colorado contends that the FCC can rely on the same statutory authority to allow schools to extend connectivity to students’ homes that the Commission relied on to establish the Connected Care Pilot Program, which funds the purchase of Internet access service for participating telehealth patients’ remote use.

Last summer, Nevada filed a request for waiver of the restrictions on the use of E-Rate-funded broadband connectivity beyond school property. Nevada proposes to install fixed wireless hotspots on the roofs of school buildings to extend their E-Rate-funded broadband Internet connectivity to a two-to-three-mile radius around each school site for students’ and staff’s use. Nevada specifies that access to the schools’ networks would be restricted to students and staff through specific credentials or by their registered devices. According to Nevada, by leveraging existing fiber connections, fixed wireless

hotspots could “bridge 60% of the current connectivity gaps that exist due to geographic and economic limitations across the State.”

The Bureau seeks comment on these and the other issues raised by the three above-referenced petitions as well as the other petitions. To focus our consideration of the requests, the Bureau offers some more specific areas of inquiry.

The Bureau seeks comment on the specific equipment and services that E-Rate should support to fund off-campus access to broadband services for students, staff and patrons who lack adequate home Internet access. For example, the SHLB Petition requests E-Rate support for wired or wireless network equipment and services necessary for remote learning, including, but not limited to, wireless hotspot devices and fixed or mobile wireless towers. Do other commenters agree that these services and equipment are needed to support remote learning? Are there other or different services or equipment that are needed to support remote learning? For example, should modems, routers, devices that combine a modem and router, or connected devices be eligible? With respect to broadband connectivity, what level of service is required to support remote learning? The Bureau also seeks comment on the cost of the services and equipment needed to support remote learning. The Bureau encourages schools, libraries and other stakeholders that have recent experience with these services and costs to provide specific information about the services they are purchasing, the costs they are paying and what they have done to ensure the services are sufficient and the costs are reasonable.

E-Rate program rules require applicants to select the most cost-effective service offering, consistent with section 254(h)(2)(A) of the Act. Competitive bidding is a cornerstone of the E-Rate program, ensuring that applicants are informed of their options and service providers have sufficient information to provide services, leading to cost-effective pricing, and protecting limited E-Rate funds from waste, fraud, and abuse. At the same time, due to the urgency with which schools have needed to adapt to remote learning, both the Colorado and SHLB Petitions seek waivers of competitive bidding rules. In the absence of such a safeguard, how can the Commission ensure that applicants are making cost-effective purchases? Is payment of the non-discount share a sufficient incentive to prevent

wasteful spending? Would the same be true if adjustments are made to the non-discount share? What steps have schools and libraries that are currently providing off-premises broadband services to students, staff and patrons taken to ensure that they are making cost effective purchases? What other limitations or guardrails exist or are necessary to prevent waste, fraud, or abuse of E-Rate program funds? Should, for example, the Commission subject recipients of E-rate funds for remote learning equipment and services to audits similar to those conducted in the regular E-Rate program? Should the Commission apply existing E-Rate program record keeping requirements to any funds it provides to enable remote learning? What other measures should the FCC use to safeguard these funds and ensure they are used to target students and teachers who lack sufficient Internet access at home?

Publicly available information strongly suggests that substantially more funding might be needed than is potentially available through the E-Rate program. In the event that demand exceeds available funding, how should the off-campus requests be prioritized? The Bureau seeks comment on the best approach to quickly and equitably make funding available to those with the most need.

How can the Commission ensure that available funds are efficiently targeted and focused on the needs of rural students; Native American, African American and LatinX students; students with disabilities; and other populations of students that are disproportionately affected by the Homework Gap or are more expensive or difficult to reach? Does the E-Rate program's existing discount rate system adequately target students that fall into the Homework Gap, especially low-income students and those in rural or remote areas? How can the Commission prioritize limited E-Rate support to those students, staff, or patrons that still do not have adequate home Internet access to fully engage in remote learning?

Colorado requests that the Commission waive its restrictions on off-campus use of E-Rate-supported services during the COVID-19 pandemic and asserts that remote learning will remain a significant, if not exclusive, mode of instruction through at least the 2020-21 school year. SHLB requests that the Commission waive its restrictions on off-campus use for funding years 2020 and 2021, due to the uncertainties of whether students will be able to return to the classrooms during the upcoming

2021-2022 school year. If relief is granted to the Petitioners, should the relief provided apply on a prospective basis in order to target the students and staff that remain without adequate home Internet access? Or, recognizing that COVID-19 has forced schools and libraries across the country to dramatically shift the way they operate and provide education and library services since the first closures began in March 2020, should the relief provided apply retroactively to services and equipment purchased during funding year 2020? If funding is allowed for prior purchases, how can the Commission ensure that limited E-Rate funds are not used to pay for services and equipment that were reimbursed with other federal funding, including funding made available through the CARES Act or through the Emergency Broadband Benefits Program? Commenters should explain how the funding sought through the E-Rate program to address insufficient Internet access at home would not be duplicative of funding available through the Emergency Broadband Benefits Program. What are the guardrails or other measures that should be used to avoid duplication of limited funds and ensure the funds are targeted to students and teachers lacking adequate Internet access at home? Should the Commission prioritize prospective relief over reimbursements for prior purchases? What should be the timeframe for this relief? Should it start when the COVID-19 pandemic was declared a national emergency? Should it end when the national emergency is rescinded, or should another marker be used to define this period?

According to SHLB and Colorado, allowing E-Rate-funded off-campus support for students with inadequate Internet access at home during the pandemic is consistent with the Commission's authority to determine which services to support under the Communications Act. SHLB explains that the Commission can clarify that off-campus use of equipment to support remote learning during the pandemic constitutes an educational purpose under section 254(h)(1)(B). Colorado asserts that the inaccessibility of physical classrooms during the pandemic enables the Commission to deem at-home connectivity eligible for these purposes under section 254(c)(1), which requires the Commission to take into consideration, when determining eligible services, which services "are essential to education, public health, or public safety" and "are consistent with the public interest, convenience, and necessity." SHLB offers a variety of arguments for rejecting suggestions that the reference to "classrooms" in section 254(b)(6) and 254(h)(2)(A) which provide that "[t]he Commission shall establish competitively neutral

rules . . . to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms” limits the Commission’s ability to provide E-Rate supported broadband for remote learning. SHLB points out that the Commission already provides E-rate support for some off-campus services and echoes Colorado’s argument that during the pandemic students’ and teachers’ homes have become virtual classrooms. Both SHLB and Colorado argue that the Commission relied on its authority under section 254(h)(2)(A) of the Act to allow health care providers to purchase Internet access services for participating patients’ use in their homes or mobile locations during the pandemic in the Connected Care Pilot Program and can take a similar action in the E-Rate program. They also both point out that the Commission has the statutory authority to designate additional E-Rate supported services. The Bureau invites other stakeholders to comment on the Commission’s legal authority to use E-Rate funding to help address the remote learning challenges created by the COVID-19 Pandemic.

FEDERAL COMMUNICATIONS COMMISSION

Cheryl Callahan,

Assistant Chief, Telecommunications Access Policy Division

Wireline Competition Bureau.

[FR Doc. 2021-02997 Filed: 2/10/2021 4:15 pm; Publication Date: 2/12/2021]